

Notice of Allowability

Application No.

09/540,209

Examiner

Sally A Sakelaris

Applicant(s)

BRETON, GARY L.

Art Unit

1634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

☒ This communication is responsive to 10/26/2004.

2. ☒ The allowed claim(s) is/are 1-8,29 and 31.

3. ☐ The drawings filed on _____ are accepted by the Examiner.

4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of the:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.

(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)

2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____

4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)

6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____

7. ☐ Examiner's Amendment/Comment

8. ☒ Examiner's Statement of Reasons for Allowance

9. ☐ Other _____

JEFFREY FREDMAN
PRIMARY EXAMINER

11/10/04

THE FOLLOWING IS AN EXAMINER'S STATEMENT OF REASONS FOR

ALLOWANCE:

The present invention is found to be allowable subject matter as its presentation of *B. fragilis* nucleic acids and nucleic acids encoding a *B. fragilis* polypeptide represent a contribution over the prior art that lacks any such SEQ ID NO: 4084, 9306, 30 contiguous nucleotides of SEQ ID NO: 4084, or 20 consecutive amino acids encoded by SEQ ID NO: 9306.

The closest prior art made of record is as follows:

Korn et al.(Accession #Z98448, September 22, 1997), teach the nucleotide sequence consisting of at least twenty contiguous nucleotides of SEQ ID NO: 4084.(See attached alignment, Result 6). Korn et al. teach bases 180-199(20 nucleotides) of Accession number Z98448 that align with 100% identity to bases 1164-1183 of SEQ ID NO: 4084. However, Korn et al. does not teach at least thirty contiguous nucleotides of SEQ ID NO: 4084. Also, Ziegelin et al.(Accession #AJ011592, October 01, 1998), teach an isolated nucleic acid encoding at least 10 consecutive amino acids of SEQ ID NO:9306, wherein the nucleic acid sequence is hybridizable to a nucleic acid having a nucleotide sequence selected from SEQ ID NO:4084(See attached alignment Result 10). Ziegelin et al. teach bases 1144-1185 of accession # AJ011592 that align with 100% identity to the nucleic acids encoding amino acids 428-441(14 amino acids) of SEQ ID NO: 9306. However, Zieglin et al. do not teach at least 20 consecutive amino acids.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sally A Sakelaris whose telephone number is 571-272-0748. The examiner can normally be reached on M-Fri, 9-6:30 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones can be reached on 571-272-0745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 9, 2004

Sally Sakelaris



JEFFREY FREDMAN
PRIMARY EXAMINER

11/10/04